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**BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON**

CHINOOK TRIBE OF INDIANS,)

SHB NO. 93-26

Appellant.)

v.)

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

**WAHIAKUM COUNTY,)
and WAHIAKUM COUNTY)
PORT DISTRICT #2,)**

Respondent.)

_____)
This matter came before the Board on an appeal filed by the Chinook Tribe of Indians ("Chinook") of a Shoreline Substantial Development Permit ("Permit") approved by Wahkiakum County ("County") for Wahkiakum Port District #2 ("Port").

A hearing was held on December 14, 1993, in Cathlamet, and December 15, 1993, in Lacey. Present for the Board were Richard Kelley, who presided, Robert Jensen, Bobbi Krebs-McMullen, Martin Carty, and O'Dean Williamson. The proceedings were recorded by Tamu Kern, of Archer and Archer, Longview, and Lenore Schatz, of Gene Barker and Associates, Olympia. The parties were represented by John S. Palmer, attorney, for Chinook; Fred Johnson, County Prosecuting Attorney, for the County, and Tayloe Washburn, attorney, for the Port.

Witnesses were sworn and testified. Exhibits were introduced and examined. The parties' written closing arguments were considered. Based on all of the above, the Board makes the following

**FINAL FINDINGS OF FACT.
CONCLUSIONS OF LAW AND ORDER
SHB NO 93-26**

1
2 **FINDINGS OF FACT**

3 **I.**

4 On March 16, 1993, the Wahkiakum County Board of Commissioners approved a
5 Shoreline Substantial Development Permit for Wahkiakum Port District #2. The Permit was
6 filed with the Department of Ecology, who requested additional materials, all of which were
7 received by Ecology and the Permit filed by May 13, 1993. On April 21, Timothy Tarabochia
8 filed a Request for Review ("Appeal") on behalf of the Chinook Tribe of Indians, which
9 Appeal was certified to the Shorelines Hearings Board by Ecology and the Attorney General
10 on May 25, 1993.

11 **II.**

12 The Permit would allow the Port to develop a public trail of approximately 2.5 miles as
13 an addition to Skamokawa Vista Park. The trail would run for almost its entire length within
14 200 feet of the Columbia River. Approximately two thirds of the distance downriver from the
15 present park, the Bayview historic site sits on the River shore. The trail would lead hikers
16 directly across the center of the Bayview site.

17 **III.**

18 The parcel of land over which the trail would pass is heavily wooded and mostly steep.
19 Public access to the public property, owned by the Port, along this stretch of the River is very
20 limited. Such access is nearly impossible by foot, and only practicable by boat, thus severely
21 restricting the public in the exercise of its right to enjoy its property.

22 **IV**

23 The Chinook Tribe of Indians has lived in the Skamokawa area much longer than have
24 Americans of European descent. Their history at that site and in the adjacent area has been
25 recorded by a number of scholars, most importantly by Keith D. Gehr, of the Oregon

1
2 Archeological Society. ("The Bay View Cannery-Skamokawa Village Site," Northwest
3 .. Vol.9, No.1, 1975.) The Chinook were resident at Bayview
4 and greeted Lewis and Clark on November 6, 1805, according to the expedition's log. During
5 the first half of the 19th Century, the Tribe was led by Chief Skamokawa. The Bayview site
6 included at least seven houses, a large lodge, fish smoking tree or trees, and burial sites for an
7 undetermined number of Chinook people.

8 Wilkes (1844, p. 127, cited by Gehr, p. 123) reported:

9 *We anchored just below the Pillar Rock and opposite to*
10 *Waikaikum. Waikaikum belongs to a chief named Skamakewa*
11 *and is a large lodge, picketed around with planks... This chief*
12 *formerly had a large tribe under him, but since the year 1830 the*
13 *fever has destroyed them nearly all.*

14 Oral tradition of the Chinook, while more difficult for the Board to assign appropriate
15 evidentiary weight, also clearly points to Bayview as the site of Skamokawa's village. Physical
16 evidence is abundant as well:

17 *During logging operations about 1962, a bulldozer*
18 *operator was piling dirt and rock from the small stream fan in an*
19 *attempt to build a ramp over the rock marking the west boundary.*
20 *He uncovered a grave described as containing two adults, one*
21 *with a flattened skull, and two children. Among the rich grave*
22 *goods were 5-6 yd of beads, three brass and three iron pistols, a*
23 *gold embellished sword, an unusual eagle medal, Phoenix*
24 *buttons, brass earrings and bracelets, a Marian medal, Harrison*
25 *presidential campaign tokens dated 1841, and jewelry. The latter*
26 *included three brooches and a bracelet that would be considered*
27 *exquisite even by today's standards. Two pale blue blown beads*
and one faceted ruby-colored seed bead were also noteworthy.
(Gehr, p.135)

Indian artifacts have been recovered from the site, both by scientific inquiries such as
Gehr's, and, more frequently, by the looting of potters and ghouls. Human skulls found at the

1
2 site, like that reported by Gehr, have manifested the flattened skull characteristic of the
3 traditional Chinook practice.

4 Gehr and other scholars have also detailed the later use of the site as a fish cannery by
5 European Americans, working largely with Chinese immigrant labor. We find this history to
6 be significant in itself, although not central to the dispute at hand in this case.

7 We find, in summary, that Bayview is a cultural and historic site of considerable
8 significance, it is fragile and susceptible to looting and vandalism, and it has particular value
9 to the living descendants of the Chinook Tribe of Chief Skamokawa.

10 V

11 The isolation and cultural significance of the Columbia River shoreline near Bayview
12 has lent itself, at least in recent years, to religious practice by individuals from the Chinook
13 Tribe. The opportunity for such practice in the future would be reduced somewhat by
14 increased public access to the site.

15 VI.

16 At present, those who would rob the site of its human remains and artifacts must access
17 Bayview by boat. It is very difficult for Port personnel to effectively monitor the activities of
18 looters who visit the site by boat, since such monitoring would involve Port personnel taking
19 their own boat downriver to the site.

20 Improved public access to Bayview along a new trail would make it easier for potters
21 and ghouls to violate the site. At the same time, however, it would also be easier for Port
22 personnel to observe and police such activity

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VII.

The County conducted its normal SEPA review process, affording Tribe members only the notice provided the general public in the area. A Determination of Nonsignificance was issued, and following public hearings by the Planning Commission and Board of County Commissioners, the Substantial Development Permit was issued.

The information provided to the County by the Port on its original SEPA checklist did not adequately address the subject of historical and cultural impacts. Similarly, the consultant report from C.R.E.S.T. did not adequately emphasize the importance of protecting the Bayview site. Thus the County Shoreline Administrator and County Commission were disadvantaged in making a fully informed decision.

VIII.

The permit approved by the County Commission includes four "recommendations" regarding the Bayview site. The four are stated in terms of "recommend", "suggest", and "should", and not as enforceable mandatory permit conditions.

IX.

Any conclusion of law deemed to be a finding of fact is hereby adopted as such.

Based on these findings of fact, the Board makes the following

CONCLUSIONS OF LAW

I.

The Board has jurisdiction under RCW 90.58.

II.

The Chinook Tribe of Indians is not a Federally recognized tribe. The Board previously ruled that lack of Federal recognition does not deprive the Tribe of standing to

bring this appeal, because some members of the Tribe are residents of the area and directly affected by the permit. Lack of Federal recognition does, however, impact the Tribe's right to special notice regarding an action subject to WAC 197-11-340 of the SEPA Rules. "Affected tribe" is defined in WAC 197-11-710:

Affected tribe or "treaty tribe" means any Indian tribe, band, nation or community in the state of Washington, that is federally recognized by the United States Secretary of the Interior and that will or may be affected by the proposal.

Thus the notice due to Tribe members in the Skamokawa area was only the same notice due to all members of the public. We conclude that they received the required notice. In fairness to the County, we note that the Chinook Tribe as an entity has had very little visible presence in the Skamokawa-Cathlamet area in recent years, and initially their interest might well have been innocently overlooked. This having been said, we also note the poor judgment exercised by the County in going ahead with the permit decision while the Tribe was still reviewing the proposal in its own process. We can only conclude that the Tribe's judgment regarding the value of the site was not terribly important to the County and the Port.

III.

Because it fails to adequately address the cultural and historic significance of the Bayview site, and in light of information available later, we conclude that the SEPA Determination of Nonsignificance was clearly erroneous.

IV.

The Columbia River at Skamokawa is a shoreline of statewide significance under RCW 90.58.030(2)(v)(A).

2 V.

3 The Wahkiakum County Shoreline Master Program ("WCSMP") designates the area of
4 the permit as Urban (at the Skamokawa end) and, in major part, Conservancy.

5 VI.

6 The Shoreline Management Act ("SMA") gives preference to uses of shorelines of
7 statewide significance which, among other values,

8 *(4) Protect the resources and ecology of the shoreline;*

9 and

10 *(5) Increase public access to publicly owned areas of the shoreline;...*

11 RCW 90.58.020.

12 Regarding public access, the WCSMP responds to the mandate of the Act by defining
13 appropriate uses of Conservancy areas to include "low to moderate intensity" use of "foot
14 trails". WCSMP p.75.

15 VII.

16 We conclude that the permit as approved admirably increases public access to publicly
17 owned areas of the shoreline.

18 VIII.

19 The WCSMP also addresses the protection of cultural and historic resources:

20 *(1) such sites should be regarded with the same concern*
21 *for protection as an endangered or fragile species or ecosystem.*

22 *(2) such sites should be made available to the general*
public; however, access to sites may be by foot trail, boat or
other means of less convenience than paved roads.

23 WCSMP, Historical/Cultural Element.

24 And again.

(a) Where possible, sites should be permanently preserved for scientific study and public observation.

WCSMP, Archeological and Historic Sites, p.17.

The goals of public access and protection of irreplaceable cultural and historic resources are not always compatible. When the two goals directly conflict, the local government must choose between them.

Because the provisions it includes regarding protection of the Bayview site yield heavily to public access, are limited in scope and not enforceable in language, we conclude that the Substantial Development Permit approved by the County does not comply with the requirements of the WCSMP and the SMA regarding protection of cultural and historic sites.

We do not, however, see this as a case in which an absolute choice must be made between preservation and public access. The need for public access along the shoreline is very strong, and it is abundantly served by this long trail. At the same time, the rationale for public access directly to and directly across the Bayview site is very weak. There is nothing, literally, for the public to see at Bayview. While some mild curiosity might be served by seeing where something once was, the importance of that opportunity pales in comparison to the damage and looting the access would allow

We conclude that the two goals of public access to the shoreline and protection of cultural and historic resources can be served simultaneously by rerouting the trail away from Bayview.

IX.

Any finding of fact deemed to be a conclusion of law is adopted as such.

Based on the above findings and conclusions, the Board makes the following

ORDER

The permit is remanded to the County with instruction to amend it to conform to the following conditions:

1. The trail shall be rerouted and, if necessary, shortened, so that it at no point comes within 400 feet of the perimeter of the Bayview site, as designated by an independent archeological consultant retained by the Port, and no access of any kind shall be facilitated from the trail to the site;

2. No public information shall be provided which would lead anyone to the precise site of Bayview, but general information at the parking lot trailhead regarding the history of a site "in the area" shall be allowed:

3. Permit conditions 5-A,B, and C shall be reworded to make their suggestions mandatory. Permit conditions 5-D and E shall be stricken; and


4. Religious practice in the park shall be allowed for anyone who demonstrates, as Chinook Tribe members have in this case, that the area holds special religious or contemplative significance for them. Such allowance shall not be allowed to close the park or trail, or otherwise significantly interfere with the rights of the public to use of its property.

DONE this 31st day of March, 1994.

SHORELINES HEARINGS BOARD



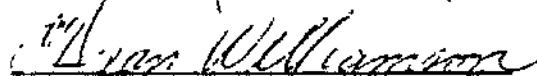
RICHARD C. KELLEY, Presiding




ROBERT V. JENSEN, Chairman



BOBBI KREBS-McMULLEN, Member



O'DEAN WILLIAMSON, Member



MARTIN CARTY, Member

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